Remarks:

Regarding the omission of a US patent number:

The amendment to page 24 of the application provided above is believed to fully address and overcome the Examiner's objection, rendering it moot.

Regarding the rejection of claims 11 and 12 under 35 USC 112, 2nd paragraph:

The amendments to claims 11 and 12 presented herein are believed to address and overcome the Examiner's rejection.

Regarding the rejection of claims 1, 3-6, 15-18 under 35 USC 102(b) in view of US 6037319 to Dickler:

The applicant respectfully traverses the Examiner's determination concerning claims 1, 3-6 and 15-18 in view of the Dickler reference, but believes that the objection is now moot in view of the applicant's amendment to claim 1, which incorporates into that independent claim essential features of prior claim 7 which claim had not been objected to by the Examiner. This amendment is believed to render claim 1 as allowable, and hence all dependent claims as allowable over the prior art Dickler reference.

Accordingly, reconsideration of and withdrawal of the Dickler reference from further consideration is solicited.

Regarding the rejection of claims 1, 3-8, 13-18 under 35 USC 103(a) in view of US 2002/0142931 to DeNome:

The applicant respectfully traverses the rejection of the foregoing claims in view of the DeNome reference.

As the Examiner correctly points out the DeNome composition is essentially directed to a dishwashing article which in relevant part, comprises an anhydrous, shear thinning organo solvent-based gel, which may optionally be in the form of a particulate suspension. The gel may be supplied as a "unitized dose" suited to hold the DeNome

composition in a pouch or capsule which is preferably made of a water dispersible or water-soluble material such as a water dispersible polymer. Each of these unit dose compositions is however constructed so that the compositions are used in conjunction with an automatic dishwashing machine. See, DeNome, page 9, para. [0084]. The dishwashing article is supplied to suitable dishwasher dispenser which forms part of such a machine. See DeNome, page 9, para. [0085]; page 10, para. [0091]. Clearly then, DeNome is at best directed to a composition which is intended to be used in a manner which is distinguishable from that type of composition which is currently claimed in applicants presently amended claim one. It is the applicant's position that a skilled artisan, reading the DeNome reference and in particular the fact that each of the articles provided by DeNome is intended to be used in conjunction with an automatic dishwashing machine, and in an automated process whereby the dishwashing article of DeNome is automatically released by part of the controlled process would not necessarily find the DeNome composition or article as being particularly relevant. This is particularly the case when considering that in preferred embodiments, the applicant's composition is intended to be supplied to a bucket, bottle, such as a trigger spray bottle, or other container within which applicants concentrate in sachet is intended to be dispensed by dissolution of both the concentrate and the sachet materials. Unlike DeNome, wherein the dissolution of the DeNome article is not required, as it is quite foreseeable that in an automatic dishwasher small bits of insoluble materials, such as food scraps and possibly even one or more constituents of the DeNome article can be president, and yet be considered a technical success. In preferred and arguments however, the compositions of the present invention as well as the articles taught by the present inventors are substantially or wholly dissolves when the sachet containing the concentrate composition is provided to a greater quantity of water. Such is a more difficult technical requirement to supply and not one which is readily attained. Such is particularly the case wherein room temperature water is used as the dissolving medium. Such a technical result is not readily apparent, nor is necessarily suggested by the DeNome articles which are in each and every instance (a) dispensed an automatic dishwasher, and out of the sight of a consumer and, (b) would be expected by a skilled

artisan to be released into a heated quantity of water which would be known to very quickly dissolve any water-soluble film, and likely also to dispense the contents. Furthermore, as the DeNome compositions are essentially gels, one of skill in the art would not have any reasonable certainty that such gels would necessarily be dispersed or dissolved when provided to a larger quantity of water, as certainly the operating conditions of an automatic dishwasher weren't typically the water is heated, and a great deal of mechanical and/or hydraulic agitation is president would not teach or suggests to a skilled artisan seeking to provide the types of compositions which the applicants provide and their invention.

The Examiner is respectfully reminded that with regard to any rejection based on obviousness under 35 USC §103(b), MPEP section 2143 states that three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. See, *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); *In re Rouffet*, 149 F.3d 1350, 1355-56 [47 USPQ2d 1453] (Fed. Cir. 1998). But see also *KSR International Co. v. Teleflex Inc.*, 82 USPQ2D 1385 (U.S. 2007)

Accordingly, reconsideration of the propriety of the rejection of the indicated claims in view of the DeNome reference, and withdrawal of the rejection is respectfully requested.

Regarding the rejection of claims 9-12, 19 and 20 under 35 USC 103(a) in view of US 2002/0142931 to DeNome, further in view of US 5958858 to Bettiol:

The applicant respectfully traverses the rejection of the indicated claims and view the combined DeNome and Bettiol references.

For the sake of brevity, the applicant here and repeats and incorporates by reference to prior remarks made with respect to the purported relevance of the DeNome reference.

Turning now to the Bettiol document, the compositions of anionic invention are directed to a detergent composition which includes; (a) 0.1 -20%wt. of a dianionic cleaning agent comprising a structural skeleton of at least five carbon atoms, having at least one anionic substituent group which is a sulfate group and at least one further anionic substituent group which is selected from a sulfate group or a sulfonate group; (b) 0.1 – 50%wt. of a nonionic surfactant; (c) in total, less than about 20%wt. of anionic surfactants; (d) optionally from about 0.1% to about 50% anionic surfactants, and (e) from about 0.1 to about 99.8%wt. of detergent composition adjunct ingredients; were in the ratio of the aninioc surfactants to nonionic surfactants plus any optional co-surfactants is from about 1:1 to about 1:10.

While the Examiner has indicated that the relevance of the Bettiol document is the alleged teaching that the incorporation of alkyl polyglycoside nonionic surfactants with alkoxylated ternary ammonium surfactant compounds is suggested, the compositions as cited by Bettiol appeared to be directed to laundry detergent compositions, or automatic dishwashing detergent compositions.

The applicant traverses the Examiner's reliance upon the Bettiol document and its alleged combine ability with the DeNome document for the simple fact that the Bettiol compositions are clearly either in a liquid, solid, gel, or powdered form and in no time during their service life are they enclosed in a water-soluble or water dispersible film or container. Thus, the removal of this technical stricture, viz., stable containment in a water-soluble or water dispersible film or container provides to a formulator a much greater degree of selection among available constituents. Thus, Bettiol's formulations

and their individual constituents can be made in the blissful ignorance of technical problems or limitations which would be occasioned had a been required to be retained for a reasonable length of time, or for a greater length of time in a water-soluble or water dispersible film or container. Thus, the applicant respectfully traverses the Examiner's concatenation of the numerous individual chemical compounds recited by Bettiol and their incorporation into the types of compositions provided by DeNome. Notwithstanding the fact that the Bettiol reference provides a copious recitation of a wide variety of chemical compounds, materials and agents which conceivably may find some use in Bettiol's detergent compositions, such a recitation is actually more akin to a chemical supply catalog which may list myriad raw materials, but provides little in the way of guidance as to producing any specific composition. Pertinently there is nothing in the Bettol reference which provides any useful teaching as to the selection of, or the utility of constituents or combinations of constituents which would be expected to be stable for a reasonable length of time when provided in the interior of a water-soluble or water dispersible film pouch or container. Thus, the Examiner's assessment that the incorporation of alkyl polyglycoside surfactant and alkoxylated quaternary ammonium surfactant into the types of articles taught by DeNome is respectfully contended to be flawed. On the one hand, the applicability of the compositions of the Bettiol reference to the types of articles provided by DeNome are not clearly supported, and on the other hand there is nothing within the four corners of the Bettiol reference which teaches utility of the specific combinations of these surfactants, and the expectation that they would not unduly degrade or react with the water-soluble or water dispersible film pouch or container if so formulated.

In view of the foregoing remarks the present applicants disagree with the Examiner's position, and point out that the Examiner has not met the proper burden of proof to present and maintain the rejection; such are simply unsupported by the facts for the reasons noted above. Rather the applicant contends that the Examiner's grounds of rejection is at, at best, a hindsight reconstruction, using applicant's claim as a template to reconstruct the invention by picking and choosing amongst isolated disclosures from the

prior art. This is impermissible under the law. For example, in *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), the Federal Circuit stated:

> "It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." (quoting *In re Fine*, 837 F.2d at 1075, 5 USPQ2d at 1600)

Accordingly, reconsideration of the propriety of the rejection of the foregoing claims 9-12, 19 and 20 under 35 USC 103(a) and its withdrawal is respectfully requested.

In view of the foregoing remarks, reconsideration of the rejections raised by the Examiner is respectfully requested, and early issuance of a *Notice of Allowance* is solicited. Should the Examiner in charge of this application believe that telephonic communication with the undersigned representative would meaningfully advance the prosecution of this application towards allowance, the Examiner is invited to contact the undersigned at their earliest convenience.

CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully Submitted;

Andrew N. Parfomak

01 October 2007

Andrew N. Parfomak, Esq. Date:
Reg. No. 32,431
Norris, McLaughlin & Marcus, PC
875 Third Avenue, 18th Floor
New York, NY 10022

Tel: 212 808-0700

CERTIFICATE OF TELEFAX TRANSMISSION UNDER 37 CFR 1.8

I certify that this document, and any attachments thereto, addressed to the: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" is being telefax transmitted to (571) 273-8300 at the United States Patent and Trademark Office.

Andrew N. Parfomak — Date: 01 Oct. 2007

D:\ANPCMB\102792\250\Amendment01.doc